R. E. PUCKETT
R. C. ALTROGGE

IBLA 90-513 Decided November 3, 1992

Appeal from a decision of the Colorado State Office, Bureau of Land Management, revoking a previous decision terminating the period of liability on Lessee's Bond No. 052-789G3309, relating to oil and gas lease C-13702.

Reversed.

1. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Bonds

Where BLM approves the assignment of the transfer of record title to an oil and gas lease from two co-lessees, who are co-principals on a lease bond, one of whom is also the operator of a well on the lease, to an assignee with a statewide bond, responsibility for performance of all lease obligations, including bonding, shifts, in accordance with 43 CFR 3106.7-2, to the assignee and its surety. A decision to terminate the period of liability on the lease bond is properly issued.

2. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Bonds

Where an operator provides bond coverage for a lease, upon transfer of its rights, the new operator must, in accordance with 43 CFR 3106.6-1, furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond. However, where co-lessees, one of whom is the operator of a well on the lease, are co-principals on the lease bond, and BLM approves a transfer of record title interest in the lease, the co-lessee/operator is not required to maintain the lease bond in the absence of the designation of a new operator. The reason is that upon approval of the assignment of the record title, the assignee and its surety become responsible for the performance of all lease obligations, including bonding.

IBLA 90-513

APPEARANCES: Laura Lindley, Esq., Denver, Colorado, for appellant; Lyle K. Rising, Esq., Office of the Regional Solic
the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

R. E. Puckett and R. C. Altrogge have appealed from a July 13, 1990, decision of the Colorado State Office, Bure
(BLM), revoking a June 28, 1990, decision terminating the period of liability on Lessee's Bond No. 052-789G3309, relatin
13702, due to the approval of an assignment of that lease from Puckett and Altrogge
to Pioneer Oil & Gas Company (Pioneer).

BLM issued oil and gas lease C-13702 on December 2, 1971, effective January 1, 1972. In a memorandum dated
Management Service informed BLM that "lease No. C-13702 is considered held by production" because "production capabi
to the expiration date of December 31, 1981, at well No. 1-21-1-2, Section 21,
T. 1 S., R. 2 E., Mesa County, Colorado * * *." In 1984, Puckett and Altrogge requested that BLM approve an assignmen
On November 14, 1985, they filed a "Designation of Operator" with BLM naming Puckett as the operator of the lease. In a
1986, BLM informed Puckett and Altrogge that "[b]efore the assignment
may be considered for approval the bonding requirement as stated below
must be met to comply with 43 CFR 3104." That requirement was set forth
in the alternative as a $10,000 Bond of Oil and Gas Designated Operator
from Puckett; a $10,000 Lessee's Bond for each assignee or one $10,000 Lessee's Bond with both assignees as principals; or a
Bond for each assignee. Thereafter, Puckett and Altrogge filed a $10,000 Lessee's Bond with both named as principals. By
1986, BLM accepted that bond effective the same day as approval
of the assignment, July 1, 1986.

In April 1990, Puckett and Altrogge sold oil and gas lease C-13702
at auction to Pioneer. In May 1990, an assignment of C-13702 from Puckett and Altrogge to Pioneer was filed with BLM.
1990, Puckett and Altrogge requested that BLM release Lessee's Bond No. 052-789G3309. Enclosed with that letter was
for C-13702, with an effective date of May 1, 1990, and a copy of evidence of Pioneer's Statewide bond for Colorado (BLM
the amount of $25,000.

By decision dated June 28, 1990, BLM terminated the period of liability of Lessee's Bond No. 052-789G3309, e
approval of the assignment from Puckett and Altrogge to Pioneer, June 1, 1990.
On July 13, 1990, BLM received a letter from Pioneer stating that it was investigating whether it had been misinformed w
and that "Puckett and Altrogge may have fraudulently transferred" the lease to Pioneer. It requested that BLM not release Puc
until the matter could be resolved.

On the same date, BLM issued the decision under challenge by Puckett and Altrogge. Therein, BLM stated that Lessee's Bond No. 052-789G3309 was terminated in error; that Puckett was the last approved operator for well No. 1-21- operator has stated in writing to the authorized officer that they [sic] are responsible under the terms and conditions of the le Robert E. Puckett is still liable for bond responsibility 43 CFR 3104.2." BLM did not revoke the lease assignment to Pion

Appellants contend that termination of the period of liability on their bond was proper and supported by the facts of the case, applicable regulations, and prior decisions of this Board. Ap 43 CFR 3106.7-2 (1989), which provides that the transferee and its surety are responsible for lease obligations once the assig been approved. Appellants cite Karis Oil Co., 58 IBLA 123, 125 (1981), in which the Board, in construing a prior version of that regulation, ruled that "[o]nce approval of the assignment c it is error to hold that the assignor's bond liabilities for the subject lease continue." Appellants assert that BLM's apparent r of "operator" in 43 CFR 3100.0-5(a) in revoking the termination decision is misplaced. 1/

In response, BLM claims that, in accordance with 43 CFR 3100.0-5(a), "an operator is a person who has sta responsible for operations on the lease regardless of who holds record title" (Reply Brief at 2 (emphasis in original)). In t Puckett was the operator and because Pioneer had not assumed that responsibility, the period of liability on Lessee's Bond No. 052-78 terminated. BLM asserts that the decision revoking termination had been prepared before receipt of the July 13, 1990, letter f completely on the fact that the operator of a lease, on which there is a well, is required to have a bond and had nothing to do with resolution of a dispute between appellants and Pioneer. BLM c of Karis, relying on a footnote therein stating that "regulations and various forms could be structured in such a way so as t an assignor's bond would not be released until it had been ascertained that there was no need for recourse against it * * *." 58 asserts the Department restructured the regulations in 1988 to make the operator primarily responsible for the "performance (Reply Brief at 4).

[1] Appellants assert in an answer to BLM's reply brief that the regulation involved in the Karis decision was c

1/ That regulation defines "operator" as "any person or entity, including, but not limited to, the lessee or operating rights o writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conduct a portion thereof."

2/ The bond posted by appellants in this case is a "lease bond." See 43 CFR 3104.2.

correspond to changes in terminology; no substantive changes were made.
A comparison of the language of the regulation before and after the 1988 change, appellants claim, shows that, but for the term
virtually identical. The regulation interpreted in Karis stated:

> (b) Continuing responsibility.
>
> The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obliga the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsi the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary. [Emphasis added.]

43 CFR 3106.2-3(b) (1980). The updated regulation provides:

> § 3106.7-2 Continuing responsibility.
>
> The transferor and its surety shall continue to be responsible for the performance of all obligations under t a transfer of record title or of operating rights (sublease) is approved by the authorized officer. If a transfer of rec approved, the obligation of the transferor and its surety to the United States shall continue as though no such tra had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be re the performance of all lease obligations, not withstanding any terms in the transfer to the contrary. When a transfe rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to [Emphasis added.]

43 CFR 3106.7-2 (1989); see 53 FR 17356 (May 16, 1988).

Except for the addition of the concluding sentence in the updated version and terminology changes, appellants' c
regulation involved in Karis was changed only in form. Thus, contrary to BLM's representation, Karis remains good law
approved an assignment, the assignee having posted a statewide bond of $25,000. BLM issued a decision terminating the
assignor's bonds, but refusing to release the bonds. The Board held, as appellants stated, that once approval of the assignm
to
hold that the assignor's bond liabilities for the subject lease continue," unless BLM were to otherwise expressly condition
ment, which it did not in that case. The Board found its conclusion to be supported by 43 CFR 3106.2-3(b) (1980). The sub
has not changed. Thus, in this case BLM properly issued the decision to

terminate the period of liability for Lessee's Bond No. 052-789G3309 and improperly revoked that decision.

BLM cites 43 CFR 3106.6-1 for the proposition that "once there is an existing well on the lease, the operator m the event of an assignment of record title" (Reply Brief at 4). The regulation cited by BLM provides:

> Where a lease bond is maintained by the lessee or operating rights owner (sublessee) in connection with a partic transferee of record title interest or operating rights
> in such lease shall furnish, if bond coverage continues to be required, either a proper bond or consent of the sur the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such Where bond coverage is provided by an operator, the new operator shall furnish an appropriate replacement bo evidence of consent of the surety under the existing bond to
> become co-principal on such bond.

We agree with appellants' construction of the regulation, which is that if the operator on the ground is neither the lessee of record nor the operating rights owner and the operator conveys its rights in the well, the new operator is required to furnish bond coverage. That is not the situation presented in this case. Here, Pucke lessees of C-13702 and Puckett was the operator. They had provided a lease bond, as co-principals. See 43 CFR 3104.2. As ferred all right, title, and interest in the lease and the well thereon to Pioneer, who had a Statewide bond. See 43 CFR 3104.3(a). 3/ When BLM approved the assignment to Pioneer, Pionee Statewide bond became responsible for the performance of all obligations. See 43 CFR 3106.7-2; 43 CFR 3106.6-1; Nyle 74 (1989).

On May 7, 1992, BLM filed documents with this Board showing that Pioneer brought suit against appellants and th in the District Court of Mesa County, Colorado, Case No. 90 CV 180; that the parties to that lawsuit reached a settlement ag of that agreement, appellants and Pioneer agreed to execute an assignment of C-13702 back to appellants. BLM included copi ment forms that were filed with BLM on February 18, 1992. Typed onto the form was the notation that "[i]t is the intent he Assignees [Puckett and Altrogge] all that right, title and interest conveyed to the Assignor [Pioneer] in a Record Title As May 1, 1990." 4/

3/ Under the regulations, statewide bonds may be posted "in lieu of" lease bonds. 43 CFR 3104.3(a).
4/ Actually, the assignment from Puckett and Altrogge to Pioneer had been made effective June 1, 1990, by BLM. The bil date of May 1, 1990.

Thus, appellants now have pending before BLM assignment forms which, upon approval, would return record
Therefore, if bond coverage continues to be required, appellants must provide a bond prior to approval of the assignment. 5

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 4
appealed from is reversed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

5/ In the documents forwarded to the Board in May 1992 was a copy of
a letter to Puckett from the Grand Junction Resource Area, BLM, dated Feb. 25, 1992, requiring that well No. 1-21-1-2 be
and requesting submission of a Notice of Intent to Abandon.